



**Vishva Builders Limited v Moi University; National Bank of Kenya Limited & 6 others (Garnishee) (Civil Suit 51 of 1999) [2025] KEHC 3575 (KLR) (24 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3575 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT 51 OF 1999  
JRA WANANDA, J  
MARCH 24, 2025**

**BETWEEN**

**VISHVA BUILDERS LIMITED ..... PLAINTIFF**

**AND**

**MOI UNIVERSITY ..... DEFENDANT**

**AND**

**NATIONAL BANK OF KENYA LIMITED ..... GARNISHEE**

**CO-OPERATIVE BANK OF KENYA LIMITED ..... GARNISHEE**

**KENYA COMMERCIAL BANK LIMITED ..... GARNISHEE**

**STANDARD CHARTERED BANK LIMITED ..... GARNISHEE**

**ACCESS BANK LIMITED ..... GARNISHEE**

**EQUITY BANK LIMITED ..... GARNISHEE**

**ABSA BANK OF KENYA LIMITED ..... GARNISHEE**

**RULING**

1. I delivered a Judgment in this suit on 2/02/2024 in favour of the Plaintiff by awarding the sum of Kshs 185,305,011.30 with interest thereon. On 1/03/2024, upon being moved under the “slip rule”, I also awarded costs to the Plaintiff. Subsequently, on 17/10/2024, I delivered a Ruling granting the Defendant an order of stay of execution pending Appeal, subject to the Defendant depositing security. The relevant portions of the Orders were as follows:

- “i) The Applicants’ Notice of Motion dated 2/04/2024 is allowed in terms of prayer 4 thereof. Accordingly, pending the hearing and determination of the intended Appeal, an order of stay of execution is hereby granted suspending,



barring and/or prohibiting execution of the Judgment entered herein on 2/02/2024 or of the decree arising therefrom, including the order awarding costs to the Plaintiff as made on 1/03/2024, but on the condition That the Defendant shall, within a period of sixty (60) days from the date hereof, execute and file in Court a bank guarantee in the Judgment sum of Kshs 185,305,011.30 at a reputable commercial bank, as security for performance of the Decree herein.

ii) In the event of default in complying with the conditions given hereinabove within the timelines stipulated, the orders of stay of execution shall lapse and the Plaintiff shall be at liberty to execute the Decree.”

2. There are now two rival, but related, Applications for determination by this Ruling. The first one, by the Defendant, seeks basically extension of time to deposit the security ordered as above while the second, by the Plaintiff, seeks Garnishee orders in execution of the decree by way of attachment of not less than 80 bank accounts held and/or operated by the Defendant in several banks. This therefore explains the presence of the 7 banks brought in as Garnishees.
3. Described in detail, the 1<sup>st</sup> Application is the Plaintiff’s Notice of Motion dated 17/12/2024 and filed through Messrs Nyairo & Co. Advocates. It seeks orders as follows:
  - i. [.....] spent.
  - ii. [.....] spent.
  - iii. That this Court be pleased to extend and enlarge time within which the Defendant/Applicant is to comply with this Court’s orders made on 17/10/2024 requiring the Defendant/Applicant to within a period of 60 days from 17/10/2024 execute and file in Court a bank guarantee of the Judgment sum of Kshs 185,305,011.30 at a reputable commercial bank as security for performance of the decree herein.
  - iv. That in the alternative to prayer 3 above, the Court be pleased to review its Ruling made on 17/10/2024 requiring the Defendant/Applicant to within a period of 60 days from the date hereof execute and file in Court a bank guarantee of the Judgment sum of Kshs 185,305,011.30 at a reputable commercial bank as security for performance of the decree herein and in lieu thereof the Defendant/Applicant be allowed to deposit title deed to Pioneer/Ngeria Block 1(EATEC)/839 as security for due performance of the decree herein.
  - v. The order of stay of execution be reinstated and remain in force pending the hearing and determination of the Appeal against the Judgment and decree of the Court made on 2/2/2024 and the subsequent decision of 1/3/2024.
  - vi. That costs of this Application be in the Cause.
4. The grounds of the 1<sup>st</sup> Application are as set out on the face thereof and the same is supported by the Affidavit sworn by one Petrolina C. Chepkwony who described herself as the Senior Legal Officer of the Defendant. In the Affidavit, she deponed That following the order made on 17/10/2024 as aforesaid, the Defendant embarked on marshalling funds to secure a bank guarantee to comply with the Court order, but That however, its efforts were crippled by the “freezing” of its bank accounts by virtue of an order issued in Eldoret Miscellaneous Civil Application No. 215 of 2007 which paralyzed its operations.



5. She deponed further That the situation was compounded by the industrial action conducted by the Defendant's staff which affected its operations and led to its closure for close to two months and in effect, affected cash flow derived from fees collected from students and That as a result, the Defendant's bankers expressed hesitance to execute the bank guarantee due to insufficient funds in the Defendant's accounts. She deponed further That it is only after a return-to-work formula was secured That normalcy was restored and the Defendant resumed its operations and expected to receive cash inflow from school fees. Regarding the alternative prayer for review That the Defendant, in lieu, deposits the title deed to the property cited, she urged That it is made bearing in mind the colossal amount in issue and the assets That are at the Defendant's disposal at the moment. In conclusion, she deponed That the Defendant's predicament in securing the bank guarantee is sufficient reason warranting the review, and That the delay was not foreseeable and the prayers are not unreasonable.
6. The Plaintiff opposed the 1<sup>st</sup> Application vide the Replying Affidavit sworn on 17/01/2025 by one Ramji Vekaria who described himself as a Director of the Plaintiff and which was filed through Messrs Havi & Co. Advocates. He deponed That the Application is opposed for reasons That on 5/01/2024, the Defendant filed a Notice of Appeal against the Decree herein and requested for typed proceedings, That however, the typed proceedings were released to the parties way before the writing of the Judgment, and That in fact the Judgment was delivered on the basis of such typed proceedings. He deponed further That Rule 82 of the Court of Appeal Rules required the Defendant to file a Memorandum of Appeal before the Court of Appeal within 60 days from date of filing the Notice of Appeal, namely 5/02/2024, unless the Defendant were to demonstrate That it did not have the typed proceedings which was not the case herein, the effect of the default to file the Appeal is That the Notice of Appeal is deemed to be withdrawn and That therefore, there is no Appeal to sustain the prayer for stay of execution or extension of time to comply with the orders to deposit security.
7. He deponed further That at all material times, the Defendant had sufficient funds in its account to facilitate the full payment of the decree or the issuance of the bank guarantee, That Garnishee proceedings filed against the Defendant in Miscellaneous Civil Application No. 215 of 2007 between the same parties as herein disclosed That the Defendant held a total of Kshs 453,766,845/- in its accounts as at 9/09/2024 from which the Plaintiff recovered Kshs 132,743,682/-, and That the Defendant has simply chosen not to prioritize settlement of the decree herein or compliance with the orders for deposit of security.
8. He deponed further That the Defendant is not agreeable to the deposit of the title for the property proposed for the reasons already given (presumed withdrawal of the Notice of Appeal) and because it is in the public domain That all properties of the Defendant have been "grabbed" and there is considerable doubt as to the authenticity of the title exhibited, its value and also its availability for sale in execution of the decree. He also urged That there are no sufficient reasons to warrant review of the orders of deposit of security, and That there is a deliberate attempt by the management of the Defendant to frustrate the payment of the decree to conceal their mismanagement of the Defendant. He then gave a chronological history of how the Attorney General had since the year 2007 advised the Defendant to pay the debt herein but which advice the Defendant ignored despite receiving funds from the Ministry of Finance in 2007 to facilitate payment thereof. He deponed That the Plaintiff will suffer substantial prejudice if stay of execution is granted as it will continue being kept out of monies due to it for a period of more than 25 years, and That the Auditor General has in his Report, confirmed That the Defendant's management is pilfering public funds, including funds allocated for payment of the claim herein.
9. With the Court's leave, the Defendant then filed a Supplementary Affidavit sworn by one Professor Khaemba Ongeti who described himself as the Defendant's Deputy Vice-Chancellor Administration,



Planning and Strategy. He contended That the Defendant's Appeal is intact and valid, That no legal provision has been cited empowering this Court to strike out the Notice of Appeal or to address its validity, competence or otherwise, and That such issue can only be addressed by the Court of Appeal. He nonetheless cited Rule 84(1) of the Court of Appeal Rules and deponed That the Defendant, having applied for the typed proceedings and served the subject letter upon the Plaintiff, is still within time, and That to date, the Defendant has not been advised by the Court on the availability of the typed proceedings. Regarding the Defendant's failure to comply with the order to deposit bank guarantees as security within time, he reiterated That the respective banks were reluctant to issue the bank guarantees, and That although the Defendant holds accounts in various banks, not all such monies are considered disposable funds That would enable a bank guarantee to be issued. He deponed further That the bulk of the accounts alluded to by the Plaintiff are meant for research purposes and for sustenance of the students, That in any event, the closing balances in the accounts have changed significantly since 2024 as they do not remain static, and as such, the Kshs 321,023,163/- mentioned by the Plaintiff is clearly overstretching facts. Regarding the documents produced by the Plaintiff, he termed the same as irrelevant and diversionary as they relate to correspondence That dates back to 2006 well before Judgment was passed herein.

10. The 2<sup>nd</sup> Application is the Defendant's Notice of Motion dated 17/1/2025 and filed through Messrs Havi & Co. Advocates. It seeks a raft of orders as follows:

- i. [spent]
- ii. Kshs 1,176,826,363.96 due to Vishva Builders Limited and owing from Moi University under the Decree issued herein 2<sup>nd</sup> February, 2024 be and is hereby attached from account numbers: 1021027998400; 1021027999600; 1021027999700; 10210277999800; 1020062998800; 1020062982100; 1020098111000; 1020112084800; 1020112084700; 1020112085300; 1020112085900; 1020014461200; 1021029582000; 1020062991100; 1021027999200; 1021028784800; 3021028784800; 1021027998900; 1282098111000; 1020098111000; 1020112084500; 1020112085700; 1020112084700; 1020112084900; 1020112085000; 1020112084300; 1020112084800; 1020112085200; 1020112085300; 1020112084600; 102011208400; 1020112087700; 1020112085900; 1020062992200; 1020112086300; and 1020112066100 or any other account operated by Moi University with National Bank of Kenya Limited and be paid to Vishva Builders Limited through account number 0102446108800 operated by Vishva Builders with Standard Chartered Bank Limited.
- iii. Kshs 1,176,826,363.96 due to Vishva Builders Limited and owing from Moi University under the Decree issued herein 2<sup>nd</sup> February, 2024 be and is hereby attached from account numbers: 1129046897100; 1129046897300; 1134517252500; 1128046350701; and 1128046350700 or any other account operated by Moi University with Cooperative Bank Limited and be paid to Vishva Builders Limited through account number 0102446108800 operated by Vishva Builders with Standard Chartered Bank Limited.
- iv. Kshs 1,176,826,363.96 due to Vishva Builders Limited and owing from Moi University under the Decree issued herein 2<sup>nd</sup> February, 2024 be and is hereby attached from account numbers: 1102486558; 1107753481; 1102488690; 1202447163; 1280216247; 1197817662; 1254615494; 1107758580; 1102488690; 1101692235; 1114591114; and 1102490296 or any other account operated by Moi University with Kenya Commercial Bank Limited and be paid to Vishva Builders Limited through account number 0102446108800 operated by Vishva Builders with Standard Chartered Bank Limited.



- v. Kshs 1,176,826,363.96 due to Vishva Builders Limited and owing from Moi University under the Decree issued herein 2<sup>nd</sup> February, 2024 be and is hereby attached from account number 102017899500 and 102017899600 or any other account operated by Moi University with Standard Chartered Bank Limited and be paid to Vishva Builders Limited through account number 0102446108800 operated by Vishva Builders with Standard Chartered Bank Limited.
- vi. Kshs 1,176,826,363.96 due to Vishva Builders Limited and owing from Moi University under the Decree issued herein 2<sup>nd</sup> February, 2024 be and is hereby attached from account numbers: 69080001; 69080002; 69080003; 69151001; 69151002; and 0030100000562 or any other account operated by Moi University with Access Bank Limited and be paid to Vishva Builders Limited through account number 0102446108800 operated by Vishva Builders with Standard Chartered Bank Limited.
- vii. Kshs 1,176,826,363.96 due to Vishva Builders Limited and owing from Moi University under the Decree issued herein 2<sup>nd</sup> February, 2024 be and is hereby attached from account numbers 300291768839 and 300291768844 or any other account operated by Moi University with Equity Bank Limited and be paid to Vishva Builders Limited through account number 0102446108800 operated by Vishva Builders with Standard Chartered Bank Limited.
- viii. Kshs 1,176,826,363.96 due to Vishva Builders Limited and owing from Moi University under the Decree issued herein 2<sup>nd</sup> February, 2024 be and is hereby attached from account numbers 003-1253799; 003-1083478; 003-1065674; 2029728030; and 2029437117 or any other account operated by Moi University with ABSA Bank Kenya Limited and be paid to Vishva Builders Limited through account number 0102446108800 operated by Vishva Builders with Standard Chartered Bank Limited.
- ix. Kshs 31,117,092.70.00 or such lesser sum as may be ascertained on taxation be and is hereby attached from account numbers: 1102486558; 1107753481; 1102488690; 1202447163; 1280216247; 1197817662; 1254915494; 1107758580; 1102488690; 1101692235; 1114591114; and 1102490296 or any other account operated by Moi University with Kenya Commercial Bank Limited and be paid to account Number 1749960062 operated by Havi and company with NCBA Bank Limited.
- x. National Bank of Kenya Limited be and is hereby directed to appear before the Court to show cause why it should not pay Kshs 1,176,826,363.96 to the Plaintiff.
- xi. Cooperative Bank Limited be and is hereby directed to appear before the Court to show cause why it should not pay Kshs 1,176,826,363.96 to the Plaintiff.
- xii. Kenya Commercial Bank Limited be and is hereby directed to appear before the Court to show cause why it should not pay Kshs 1,176,826,363.96 to the Plaintiff.
- xiii. Kenya Commercial Bank Limited be and is hereby directed to appear before the Court to show cause why it should not pay Kshs 31,117,092.70.00 or such lesser sum as may be ascertained on taxation, to Havi and Company Advocates.
- xiv. Standard Chartered Bank Limited be and is hereby directed to appear before the Court to show cause why it should not pay Kshs 1,176,826,363.96 to the Plaintiff.
- xv. Access Bank Limited be and is hereby directed to appear before the Court to show cause why it should not pay Kshs 1,176,826,363.96 to the Plaintiff.



- xvi. Equity Bank Limited be and is hereby directed to appear before the Court to show cause why it should not pay Kshs 1,176,826,363.96 to the Plaintiff.
  - xvii. ABSA Bank Limited be and is hereby directed to appear before the Court to show cause why it should not pay Kshs 1,176,826,363.96 to the Plaintiff.
  - xviii. The Notice of Appeals dated 5<sup>th</sup> February, 2024 and 8<sup>th</sup> March, 2024 by the Defendant be and are hereby deemed to have been withdrawn.
  - xix. The Order made on 15<sup>th</sup> January, 2025 for temporary stay of execution of the Decree issued herein on 5<sup>th</sup> February, 2024 be and is hereby set aside, ex debito justitiae.
  - xx. The costs of this Application be settled from account numbers enumerated in prayers 2 to 9 hereinabove operated by the Defendant with the 1<sup>st</sup> to 7<sup>th</sup> Garnishees.
11. The grounds of the 2<sup>nd</sup> Application are as set out on the face thereof and the same is supported by the Affidavit sworn by the said Haresh Vekaria.
  12. In the Affidavit, he reiterated That as the typed proceedings were available, the Notice of Appeal stands withdrawn by reason of the Defendant's failure to file a Memorandum of Appeal within 60 days. Regarding the Application for extension of time to deposit security, he deponed That the Defendant, on 15/01/2025, fraudulently obtained an ex parte order reinstating the order of stay of execution which had lapsed, and That the Plaintiff's Advocates were not served with the Application and have provided a Report and Affidavit confirming forgery of the purported email of service. He reiterated That on 11/09/2007, the Ministry of Education remitted to the Defendant funds to settle the Plaintiff's claim but, to date, despite receiving the money, the Defendant continues to refuse to pay.
  13. He then deponed That the Defendant holds deposits totalling over Kshs 321,023,163/- in accounts operated with the 1<sup>st</sup>-7<sup>th</sup> Garnishees which the Plaintiff is entitled to attach as a matter of right. He reiterated That Garnishee proceedings filed in Miscellaneous Civil Application No. 215 of 2007 disclosed That the Defendant held a total of Kshs 453,766,845/- in accounts from which the Plaintiff recovered Kshs 132,743,682/- leaving a balance of Kshs 321,023,163/-.
  14. In opposition to the 2<sup>nd</sup> Application, the Defendant filed the Replying Affidavit sworn on 4/03/2025 by one Wiliam Kipchoge who described himself as the Defendant's Chief Accountant. He deponed That the Garnishee proceedings is premature as the Defendant has challenged the Judgment in the Court of Appeal, there are stay of execution orders in force, no notice to show cause was issued to the Defendant before the Plaintiff commenced execution considering That the decree was made more than 1 year ago, and That the Defendant disputes the amount claimed in execution. He then listed 13 bank accounts cited by the Plaintiff and deponed That the same hold funds from donors for research purposes as per the agreements signed with such donors whose terms restrict the use of the funds for research only and as such, attaching the accounts will have far reaching implications. He added That previously, the Plaintiff had attempted to attach the very accounts in Eldoret HCC Miscellaneous Application No. 215 of 2007 but the Court excluded the same from attachment. He also listed 15 other accounts cited by the Plaintiff and deponed That the same are operated for holding funds necessary for the subsistence of students and also for holding fees for students on scholarship, and as such, attaching them is likely to affect the Defendant's operations and infringe on the students' constitutional rights to education as they have only recently resumed studies.
  15. He deponed further That the rest of the bank accounts cited by the Plaintiff are run by the Defendant to meet its recurrent expenses and if the funds are released to the Plaintiff, the Defendant's activities will be grounded and thus effect its more than 25,000 students and 2321 employees, and That the



Defendant is yet to get back on its feet as it only recently re-opened after a long episode of industrial action which led to its closure and That the public interest should come first. Regarding the allegation of the presumed withdrawal of the Notice of Appeal, he reiterated matters already deponed. Regarding the allegation of non-service of a Hearing Notice for the Application and culminating into the issuance an ex parte interim order, he insisted That the Defendant's Advocates duly served the notice vide email and denied the allegations of any forgery in respect thereto.

16. The 7 Garnishees also filed respective Affidavits.
17. The 1<sup>st</sup> Garnishee (National Bank of Kenya Limited) filed the Replying Affidavit sworn by Simon K. Kamau on 24/02/2025 and filed through Messrs G&A Advocates LLP. He deponed That he is the Operations Manager of the 1<sup>st</sup> Garnishee's Branch situated at the Defendant's University, and confirmed That out of the 36 bank accounts targeted by the Plaintiff and held at the 1<sup>st</sup> Garnishee, 12 are operated at the Branch and he listed the monies held in each. He deponed That 4 Accounts were opened, are operated and restricted solely for Research activities in accordance with the terms of the subject donor Agreements. He however stated That the 1<sup>st</sup> Garnishee is ready and willing to comply with any orders That may be given.
18. The 2<sup>nd</sup> Garnishee (Co-operative Bank of Kenya Limited) filed the Replying Affidavit sworn by one Jackson Oire on 6/03/2025 and who described himself as a Legal Officer at the 2<sup>nd</sup> Garnishee. The same is filed through Messrs Kipkenda & Co. The deponent stated That 5 of the 7 bank accounts cited by the Plaintiff do not belong to the 2<sup>nd</sup> Garnishee, That regarding the correct 2 accounts held by the Defendant, the balances therein are not available for attachment as there is in place a Kenya Revenue Authority (KRA) Agency Notice directing the 2<sup>nd</sup> Garnishee to pay, from the accounts, monies as tax arrears due from the Defendant.
19. The 3<sup>rd</sup> Garnishee (KCB Bank Kenya Limited) filed the Replying Affidavit sworn by one Eric Suprianoh on 27/02/2025. The same is also filed through Messrs G&A Advocates LLP. The deponent stated That he is the Manager, Services, Quality & Compliance at the 3<sup>rd</sup> Garnishee's Eldoret Branch. He, too, stated That That out of the 10 bank accounts targeted by the Plaintiff and alleged to be held at the 3<sup>rd</sup> Garnishee, 4 are operated and restricted solely for Research activities in accordance with the terms of donor Agreements.
20. The 3<sup>rd</sup> Garnishee (KCB Bank Kenya Limited) also filed a second Replying Affidavit, this time sworn by one David Kemei on 18/02/2025 and who described himself as the Senior Relationship Manager, Sovereign and Public Sector Department at the 3<sup>rd</sup> Garnishee. The same is also filed through Messrs G&A Advocates LLP. The deponent confirmed That out of the 11 bank accounts cited by the Plaintiff, 10 are in operation. He however deponed That the Defendant owes the bank amounts in unremitted loan deductions/repayments for its staff, and That therefore the bank has a legal and contractual right to recover these amounts in priority over any other claims, including That by the Plaintiff. He, too, urged That its costs of the Garnishee proceedings at Kshs 70,000/- be paid from the subject accounts.
21. The 4<sup>th</sup> Garnishee (Standard Chartered Bank Limited) filed the Replying Affidavit sworn by one Lily Isiche on 5/02/2025 and who described herself as the Associate Principal, Relationship Manager at the 4<sup>th</sup> Garnishee. The same is filed through Messrs Sheth & Wathigo Advocates. The deponent confirmed That the 2 bank accounts cited by the Plaintiff are indeed held and operated by the Defendant at the 4<sup>th</sup> Garnishee. She confirmed the bank's willingness to comply with the directions That the Court may give and urged That the 4<sup>th</sup> Garnishee's costs of these proceedings be paid from the subject accounts.
22. The 5<sup>th</sup> Garnishee (Access Bank Limited) filed the Replying Affidavit sworn by one Elisha Nyikuli on 12/02/2025 and who described himself as the Head of Legal-Company Secretary at the 5<sup>th</sup> Garnishee.



- The same is filed through Messrs Alakonya & Associates Advocates LLP. The deponent stated That out of the sum of Kshs 1,176,826,363.96 arising from the decree, the Plaintiff partly recovered Kshs 132,743,682/- from the Defendant's accounts leaving a balance of Kshs 321,023,163/-. He then listed 4 accounts in which he confirmed That the Defendant holds funds at the 5<sup>th</sup> Garnishee but contended That the same are held as deposits in the Defendant's project accounts, That the funds are meant for special projects, are held in project accounts as opposed to current accounts, are for special projects and therefore should not be attached. He then strangely went on a frolic That sounded as if he were a mouthpiece of the Defendant, rather than as a neutral Garnishee. He appears to have gone beyond his "brief". I say so because he reiterated, among others, the same arguments proffered by the Defendant, including That the Defendant is a public institution, That the funds are meant for the greater benefit of the public and students, That the "public interest" overrides the private interests of the Plaintiff and That it is an affront to the realization of the ends of justice for the Defendant's deposits in the projects to be attached.
23. The 6<sup>th</sup> Garnishee (Equity Bank of Kenya Limited) filed the Replying Affidavit sworn by one Victor Owino on 24/02/2025. The same is filed through Messrs Mburu Maina & Co. Advocates. The deponent stated That he is the 6<sup>th</sup> Garnishee's Eldoret Branch Operations Manager, Services, Quality & Compliance. He deponed That out of the 4 bank accounts targeted by the Plaintiff and alleged to held at the 6<sup>th</sup> Garnishee, 2 are unknown to the 6<sup>th</sup> Garnishee and thus do not exist. He however acknowledged the 2 others and confirmed the bank's willingness to comply with any orders That may be issued. He, too, prayed That the 6<sup>th</sup> Garnishee's costs of the Application be deducted from the said accounts.
24. The 7<sup>th</sup> Garnishee (Absa Bank of Kenya Limited) filed the Replying Affidavit sworn by one Michael Massawa on 3/03/2025 and who described himself as the Legal Counsel of the 7<sup>th</sup> Garnishee. The same is filed through Messrs Owiti, Otieno & Ragot Advocates. The deponent stated That out of the several bank accounts cited by the Plaintiff and alleged to be held at the 7<sup>th</sup> Garnishee by the Defendant, only 3 are held and operated as aforesaid as the rest are closed and thus hold no funds. He then also urged That the 7<sup>th</sup> Garnishee's costs hereof be deducted or paid out from the active accounts, and also undertook That the 7<sup>th</sup> Garnishee shall comply with the orders That shall be issued by the Court.

### **Hearing of the two Applications.**

25. The parties filed written Submissions. The Defendant filed two separate sets of Submissions, both dated 7/03/2025, in respect to the two respective Applications. On its part, the Plaintiff filed the composite Submissions dated 6/03/2024 addressing both Applications. The parties' Advocates also made brief oral highlighting thereof.
26. On 12/03/2025 when the matter came up for Mention for confirmation of compliance and for fixing of a Ruling date, several new "intended" parties showed up seeking joinder into the matter as interested parties, and/or as objectors to the Garnishee proceedings, with some having already filed pleadings without leave. These parties included the Ministry of Education and also student's representatives. In a brief Ruling, I declined to allow the said parties to join the matter at this stage and advised them to wait for determination of the instant Applications. The basis of my said directions was, inter alia, That what was intended to be submitted upon was no different from what the Defendant had already addressed and submitted upon, the Applications had also been brought too late in the day when the Court, having long delivered its Judgment in this suit, is already functus officio in respect to the substantive suit, and allowing the parties to join the matter at such stage would only unnecessarily convolute the post-Judgment proceedings. I therefore held the new parties' Applications in abeyance.



### **Defendant's Submissions.**

27. In her first set of Submissions, in support of the Application for extension of time to deposit security, Ms. Odwa, Counsel for the Defendant, submitted That the Court has wide and unfettered discretion to grant the orders. She cited Section 59 of the *Interpretation and General Provisions Act*, Order 50 Rule 6 of the Civil Procedure Rules and also Section 95 of the *Civil Procedure Act*. She then basically reiterated matters already deponed in her client's respective Affidavits, and submitted That the delay in complying with the Court order of 17/10/2025 has been adequately explained. She also reiterated the response already given in respect to the Plaintiff's argument That the Notice of Appeal is presumed withdrawn. She then submitted That no prejudice will be suffered if the Application is granted and also reiterated the ground of "public interest". She urged further That the 60 days period lapsed on 16/12/2024 while the Application was filed on 17/12/2024, just 1 day later and That therefore, the same was filed without unreasonable delay. In conclusion, she cited the case of Board of Trustees of African Independent Pentecostal Church of Africa Church v Peter Mungai Kimani & 12 Others [2016] eKLR and also the case of Elite Studios Limited & Another v Intercontinental Hotels Limited [2006] eKLR.
28. In her second of Submissions, relating to the Application for Garnishee orders, Ms. Odwa reiterated the responses That had already given in her client's respective Affidavits. In respect to her argument That the jurisdiction to interrogate the competency of the Notice of Appeal is confined to the Court of Appeal, she cited the case of Beuttah Anselimo Maali v Ethiopian Airlines Enterprises [2013] eKLR.

### **Plaintiff's Submissions.**

29. On his part, Counsel for the Plaintiff, Mr. Havi, reiterated That the Notice of Appeal stands automatically withdrawn for failure by the Defendant to file a Record of Appeal within 60 days. He cited the case of Mae Properties Limited v Joseph Kibe [2017] eKLR and also the case of Dismas Ombongi v Inter Security Services Ltd [2018] eKLR. Regarding the Defendant's argument That striking out of the Notice of Appeal can only be sought at the Court of Appeal, he submitted That there are now no Notices of Appeal to be struck out, the same having died a natural death, That the affirmation of withdrawal is both a function of the High Court and the Court of Appeal, and That the Plaintiff has not herein asked for striking out of the Appeal. He cited the High Court case of Ronald Ndirangu Ndegwa & Another v Wilfred Kashinga Sharoni & Another [2019] eKLR.
30. In respect to the Garnishee Application, Mr. Havi submitted That some of the Garnishees have exhibited certificates of balances of accounts operated by the Defendant and That the consequential course directed by Order 23 Rule 4 of the Civil Procedure Rules is for the orders to be granted. Regarding the Defendant's argument That not all monies in the accounts are disposable funds, and That some of the Accounts were opened solely for Research activities as per donor agreements, Counsel pointed out That the alleged agreements had not been exhibited but only letters from the Defendant, That in any event, the alleged designated use of the funds is not a bar in law to their attachment in execution of the decree as the funds are not encumbered. Regarding the 3<sup>rd</sup> Garnishee's contention That the Defendant owes it monies in unremitted loan deductions/repayments, he observed That what is exhibited is not a certificate of balance of an overdraft and also That there is no bar in law to their attachment. He submitted That, in the absence of an established dispute with the Garnishees, the monies must be paid and That the only claim That can stop payment is one by a third party, which is not the case herein. He cited the case of Odhiambo Owiti & Co. Advocates v CFC Stanbic Bank Limited eKLR. Regarding his argument That the Defendant received funds in 2007 to pay off the Plaintiff's claim but has failed to pay, he termed such non-payment an act of bad faith. He cited the case of Nyakundi & Co. Advocates v Council of Governors & Another [2023] eKLR.



## Determination.

31. The one broad issue That arises herein for determination is “whether this Court should extend the period within which the Defendant was to deposit security as a condition for enjoying the order of stay of execution of the decree herein, or whether, instead, the Garnishee order Nisi issued herein should now be made absolute and the funds held by the Defendant in the various banks be released to the Plaintiff in execution of the decree”.
32. It is not in doubt That were this Court to grant the extension of time to deposit security as prayed, and the Defendant so complies, the Garnishee proceedings would technically lapse. For this reason, I will begin by determining the 1<sup>st</sup> Application.
33. In doing so, I may say That by my Ruling delivered on 17/10/2024, this Court already determined That the Defendant had established a case for grant of an order of stay of execution pending Appeal and it is on this basis That the Court granted the order of stay conditional on the Defendant, within 60 days, depositing a bank guarantee for the Judgment sum. That issue is therefore not in contention. The Defendant however failed to comply with the timeline given and now seeks extension of time to do so.
34. The Court’s power to grant the nature of extension of time sought herein is not disputed. Indeed, such power is well provided in various provisions of the law, including, Section 59 of the *Interpretation and General Provisions Act*, Order 50 Rule 6 of the Civil Procedure Rules and also Section 95 of the *Civil Procedure Act*. What basically the Plaintiff has argued is That the Notices of Appeal filed by the Defendant upon which the orders of stay of execution pending Appeal were issued are no longer valid with the consequence That no Appeal would therefore lie to the Court of Appeal. The alleged invalidity of the Notices of Appeal is said to be because the Defendant failed to file a Record of Appeal at the Court of Appeal within the stipulated 60 days of the Judgment. I note That the reason given by the Defendant for not filing the Appeal to date, is That it is yet to receive typed proceedings from this Court.
35. I addressed a somewhat similar point raised by the Plaintiff when dealing with the earlier Application for stay and which I uphold herein. By my said Ruling of 17/10/2024, I held That substantive issues pertaining to the validity or competence of a Notice of Appeal are matters That ought to be properly canvassed in an Application filed before the Court of Appeal under Rule 83 of the Court of Appeal Rules, seeking striking out of such Appeal, and which mandate does not lie with the High Court. This is how I put it:

“20. I also agree with the Defendant’s Counsel That the issue whether or not the Notice of Appeal was served is a matter That should more appropriately be raised before the Court of Appeal in an Application for striking out of the Notice. In adopting this view, I am fortified by the holding of the Court of Appeal in the case of *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another* [2006] eKLR. In That case, while dealing with a similar objection raised against an Application for stay pending Appeal filed under Rule 5(2) of the Court of Appeal Rules, the Court held as follows:

“Mr. Ohagga, learned counsel for the respondents ..... tried to argue before us That the notice of appeal filed by the applicant is invalid and That, therefore, the Court cannot grant the order of stay prayed for. We, however, take note of the fact That no application has been made by the respondents for the striking out of the notice of appeal and as the Court has repeatedly pointed out Rule



5 (2) (b) does not provide That "..... where a valid notice of appeal ....;" the Rule simply provides That:-

"In any civil proceedings, where a notice of appeal has been lodged in accordance with rule 74 .....

Rule 74 itself does not talk about a valid notice of appeal. The validity or otherwise of a notice of appeal is to be determined in accordance with the provisions of Rule 80 under which a notice of appeal can be struck out. We do not see any reason for determining the validity or otherwise of a notice of appeal when an application under Rule 5 (2) (b) is being considered."

36. The above authority has been followed in various subsequent Court of Appeal decisions, including in the case of Kenya Bureau of Standards v Landmark Freight Services Limited & 4 others [2019] eKLR in which the Lordships remarked as follows:

"All the Court is concerned with under Rule 5 (2) (b), as we have already said, is the arguability of the appeal or the intended appeal and the nugatory aspect of the appeal or intended appeal if the stay is not granted and the appeal or the intended appeal were to eventually succeed. There is a formal procedure under Rule 84 of the Court Rules to deal with validity or invalidity of an appeal or a notice of appeal. In any case, we cannot see any prejudice That has been occasioned to the 1<sup>st</sup> respondent."

37. While it is no doubt true That the High Court, when dealing with an Application for stay of execution pending Appeal against its decision, must interrogate some obvious pre-requisites which are apparent from the face of the record without any arguments, such as whether the Notice of Appeal was filed within time, substantive matters of fact such as whether there exists good reasons why a Record of Appeal was not subsequently filed at the Court of Appeal within the stipulated time are matters That the High Court should not engage in. That should be the preserve of the Court of Appeal to be canvassed during the hearing of an Application before That Court to strike out the Appeal. On this view, I agree with the authority cited by Ms. Odwa, namely, the decision of Odunga J (as he then was) in the case of Beuttah Anselimo Maali v Ethiopian Airlines Enterprises [2013] eKLR.
38. Mr. Havi has relied on the Court of Appeal case of Mae Properties Limited v Joseph Kibe [2017] eKLR to argue otherwise. I however find it easy to distinguish That authority as it was an Application filed before the Court of Appeal and which indeed sought for striking out of the Notice of Appeal. It was not therefore, as herein, a challenge raised before the High Court during the hearing of an Application for stay pending Appeal.
39. For the said reasons, I decline to determine the challenge raised by the Plaintiff That the Notice of Appeal stands automatically withdrawn by reason of the Defendant's failure to file the Appeal to date.
40. This now opens the way for determination of the Application for extension of time on its merits. On what considerations a Court of law should put in place when handling an Application seeking extension of time to do or carry out an act after the expiry of the time stipulated or given, I am guided by the Court of Appeal decision in the case of Edith Gichungu Koine v Stephen Njagi Thoithi [2014] eKLR, in which Odek JJA stated as follows:

"Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but no limited to, the period of delay, the reasons for the



delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

41. I am also guided by the Court of Appeal decision in the case of Kamlesh Mansukhalal Damki Patni v Director of Public Prosecution & 3 Others [2015] eKLR, in which the following statements were made:

“It must be realized That courts exist for the purpose of dispensing justice. Judicial officers derive their judicial power from the people, or as we are wont to say in Kenya, from Wanjiku, by dint of Article 159 (1) of *the Constitution* which succinctly states That “judicial authority is derived from the people and vests in, and shall be exercised by the courts and tribunals established by or under this Constitution.” Judicial officers are also state officers, and consequently, are enjoined by Article 10 of *the Constitution* to adhere to national values and principles of governance which require them whenever applying or interpreting *the Constitution* or interpreting the law to ensure, inter alia, That the rule of law, human dignity and human rights and equity, are upheld.

For these reasons, decisions of the courts must be redolent of fairness and reflect the best interests of the people whom the law is intended to serve. Such decisions may involve only parties inter se (and hence only parties’ interests) and while others may transcend the interest of the litigants and encompass public interest. In all these decisions, it is incumbent upon the court in exercising its judicial authority to ensure dispensation of justice as this is what lives up to the constitutional expectation and enhances public confidence in the system of justice.” (emphasis added).

42. The Court of Appeal commented further as follows:

“It suffices to comment That a court of law should be hesitant at closing the door to the corridors of justice prior to a litigant being heard on his complaint .....”

43. In this case, the Applicant has explained That the reason for delay to comply with the order to deposit the bank guarantee was That around the same time That the Court issued the orders, the Defendant, a public university, experienced cases of industrial action leading to a major strike by members of staff and in turn, closure of the University. According to the Defendant, these factors affected cash flow derived from fees collected from students. A second reason given was That the Defendant was crippled by the fact That its bank accounts had been frozen on account of a Court order issued in Eldoret Miscellaneous Civil Application No. 215 of 2007. According to the Defendant, as a result of the said challenges, its bankers developed “cold feet” and became hesitant to advance the bank guarantee facilities to the Defendant.
44. Guided by the principles enunciated in the authorities above, and being cognisant of the challenges That have in recent times beset the University, and which are in any event, in the public domain, and despite the spirited opposition mounted by Mr. Havi, I find the reasons given by the Defendant to be plausible and believable. The Application was also filed only 1 day after expiry of the timelines stipulated by the Court, and thus without delay.
45. Although Mr. Havi forcefully argued That the Defendant received funds from the Government for settlement of the Plaintiff’s claim way back in the year 2007 but has simply ignored or refused to pay the debt, and which observations I, too, recall alluding to in my Judgment delivered in this matter, insofar as That issue pre-dates the Judgment, I find it improper to take it into account as one of the



considerations in determining the instant Application. This is because, I believe, it would form part of the issues for determination before the Court of Appeal should the intended Appeal eventually be filed.

46. I had also in my earlier Ruling found as follows:

“ 27. The Judgment sum herein was for the sum of Kshs 185,305,011.30 plus costs and interest That has accrued from the date That the suit was filed in the year 1999. According to the Defendant, the Plaintiff’s computation of the decretal sum aggregates to an amount in excess of Kshs 1 billion. It cannot therefore be disputed That the amount is colossal and enormous by any standards .....”

.....

29. .... Considering That the Defendant is a public institution of higher learning, I agree with the Defendant That execution of the decree for such a colossal sum has the potential to disrupt and paralyse its operations, and That if execution proceeds, it will adversely affect the students and the public at large. I also take into account the fact That the Defendant, being a public institution as aforesaid, draws its funding largely from the taxpayers to run its affairs. In the circumstances, I am satisfied That execution before the Appeal is heard and determined will cause a great deal of pain and hardship to the Defendant and the taxpayer. The description I have given no doubt amounts to “substantial loss” as contemplated under Order 42(6)(2)(a) of the Civil Procedure Rules. In view of the foregoing, I find That the Defendant has satisfied the requirements and met the threshold required in Applications of the nature herein. Consequently, I grant stay of execution pending Appeal as prayed.”

47. In the circumstances, considering relevant factors, and balancing the competing interests of the parties, I am satisfied That it is in the interest of justice to grant the Defendant the extension of time to deposit security. I will therefore grant the Defendant a further 45 days to comply. It is therefore upon the Defendant to quickly act to “unfreeze” the bank accounts. Should they comply today, the accounts will be unfrozen today. The longer the Defendant delays, the longer the “freezing” of the accounts shall remain in force. The choice is the Defendant’s.

48. I am however not persuaded by the Defendant’s plea That I should also review the portion of the orders relating to the nature of the security to be deposited and to substitute the requirement to deposit a bank guarantee with, instead, one for deposit of a title deed for a parcel of land. This prayer reeks of an afterthought as no reason has been advanced on why it was not brought during the Application seeking stay of execution. Having been granted the order of stay of execution pursuant to the Court’s discretion, the Defendant cannot start “shifting goal posts” by demanding, at will, substitution of the security to be deposited. The Defendant should be grateful to, and contented by, the Court discretion already exercised in its favour.

49. Before I pen-off, I wish to comment on the allegation of fraud relating to the alleged service of a Notice upon the Plaintiff in respect to the hearing of this Application and culminating into the grant of an ex parte interim order in favour of the Defendant on 15/01/2025. The same is no doubt a grave allegation. However, this Court cannot purport to possess the expertise to determine the truth thereof. The Plaintiff is however at liberty to present the same for investigations by the relevant authorities and thereafter, upon conclusion thereof, move the Court for issuance of the appropriate orders, if merited.



**Final Orders.**

50. The upshot of my findings above is That the two Applications, dated 17/12/2024 and 17/01/2025, respectively, are now determined in the following manner, and I direct as follows:
- i. The Defendant’s Notice of Motion dated 17/12/2024 is allowed in terms of prayers 3 and 4 thereof.
  - ii. Accordingly, the 60 days period within which by the orders given herein on 17/10/2024, the Defendant was to execute and file in Court a bank guarantee in the Judgment sum of Kshs 185,305,011.30 at a reputable commercial bank, as security for performance of the Decree herein is hereby extended by a further forty-five (45) days computed from the date hereof.
  - iii. For avoidance of doubt therefore, as long as the Defendant complies with the above orders and timelines, the order of stay of execution granted on 17/10/2024 suspending, barring and/or prohibiting execution of the Judgment entered herein on 2/02/2024 or of the decree arising therefrom, including the order awarding costs to the Plaintiff as made on 1/03/2024, shall remain in force pending the hearing and determination of the intended Appeal.
  - iv. In the event of default in complying with the conditions given hereinabove within the timelines stipulated, the orders of stay of execution shall lapse and the Plaintiff shall be at liberty to execute the Decree, and/or move this Court for grant of the Garnishee Order Absolute.
  - v. To preserve the funds currently held in the respective bank accounts at the Garnishee banks awaiting compliance by the Defendant of the above orders, the Garnishee order Nisi currently in force shall continue so operating awaiting such compliance.
  - vi. Upon lapse of the forty-five (45) days aforesaid, should the Defendant not have complied with the orders hereinabove, the Plaintiff shall be at liberty to move the Court to issue the Garnishee order absolute on any relevant terms or conditions That the Court may make, including determining the identity of the subject bank accounts to be affected, considering That some of the accounts cited, in view of their special nature, were by orders made in Eldoret Miscellaneous Civil Application No. 215 of 2007, excluded from attachment in Garnishee proceedings, some of the accounts have also been alleged to be closed or are dormant with no funds therein, some are claimed to be unknown, some of the Garnishees have claimed liabilities against funds held in the accounts, and some accounts have been claimed to have been targeted by the Kenya Revenue Authority (KRA) for settlement of tax arrears owing from the Defendant.
  - vii. Similarly, the Defendant, as soon as it complies with the said orders, shall be at liberty to move the Court to lift or vacate the Garnishee order Nisi.
  - viii. The Plaintiff is awarded the costs of both the two Applications herein, to be borne by the Defendant.
  - ix. Each of the Garnishees is awarded costs assessed at Kshs 40,000/- (each) to be paid out of any of the bank accounts held or operated by the Defendant at such Garnishee bank.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 24<sup>TH</sup> DAY OF MARCH 2025**

.....

**WANANDA J. ANURO**

**JUDGE**



Delivered in the presence of:

Mr. Havi for the Plaintiff

Mr. Karanja for the Defendant

Mr. Kigen also for Defendant

Mr. Ndolo for the 7<sup>th</sup> Garnishee

Mr. Omala for 1<sup>st</sup> and 3<sup>rd</sup> Garnishees

Mr. Bett for Objector (National Treasury)

Ms. Terer for the 6<sup>th</sup> Garnishee

N/A for other Garnishees and other parties

Court Assistant: Brian Kimathi

